1258.

# SUPREME COURT OF THE UNITED STATES.

## No. 125.

JOHN L. CHAPMAN, PLAINTIFF,

vs.

FORSYTH & LIMERICK.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF KENTUCKY.

UNITED STATES OF AMERICA,
*Eighth Circuit, Kentucky District, sct:*

JOHN L. CHAPMAN, plaintiff,
against
HENRY H. FORSYTH and THOMAS LIMERICK, merchants and co-partners, under and by the firm, name, and style of Forsyth & Limerick, defendants.

In assumpsit.
November term, 1843.

The following statement of questions and points of law which arose in this case, and the adjournment thereof into the Supreme Court of the United States for decision, was ordered to bo entered, to wit:

"This was an action of assumpsit for the proceeds of one hundred and fifty bales of cotton, shipped to and sold by defendants, as the property of the plaintiff, the defendant having been *a factor*," &c.

The defendant, Forsyth, pleaded he had been duly discharged as a bankrupt, on his own voluntary petition.

To this the plaintiff replied; the replication was demurred to, and upon the hearing and argument of the demurrer, which presented the whole case, the following questions of law arose, and on which the judges were opposed in opinion:

1st. Could the defendant be discharged, as a bankrupt, from any part of his debts, on his own petition, when he was indebted, in a fiduciary capacity, in part, within the exception in the 1st section of the bankrupt law; that is, were all persons indebted excluded, that held and owed moneys in the capacity of trustees, (as a class,) from the benefit of the act, although they owed other debts besides the moneys held in trust?

2d. Is a commission merchant and factor, (who sells for others,) *or* indebted in a fiduciary capacity, within the act, provided he withholds the money received for property sold by him, and which property was

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